Supreme Court, U.S.
FILED
OCT 9 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-371

IN THE SUPREME COURT OF THE UNITED STATES

_____Term, 1986

JOHNNY M. IRVIN AND DAVID L. IRVIN
Petitioners,
VS.
RABUN COUNTY, GEORGIA, ET AL,
Respondents.

ON WRIT OF CERTIORARI
UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

FRANK W. ARMSTRONG
STEWART, MELVIN & HOUSE
P. O. Box 430
200 Main Street, 6th Floor
Gainesville, Georgia 30503
(404) 536-0101

QUESTIONS PRESENTED

Respondents fundamentally disagree with the petitioners' statement of questions presented. The only decision by the courts below was that the plaintiffs' taking claim was not ripe for resolution in light of Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City, 473 U.S. _____, 105 S.Ct. 3108, 87 L.Ed.2d 126 (1985). Therefore, questions 1, 2, 4 and 5 presented by petitioners are not subject to review by this court.

Respondents contend that the only question presented is:

1. Have Petitioners availed themselves of alternate procedures for variances and planned development zoning such that the matter has been conclusively determined by the county

commission?"

Should the court decide that the lower court misapplied Williamson, the only question remaining is:

2. Whether the trial court erred in refusing to grant petitioners a summary judgment.

PARTIES TO THE PROCEEDING, OPINIONS, JURISDICTION, AND CONSTITUTIONAL PROVISIONS AND STATUTES

Respondents accept the parties to the proceeding, the citations to the opinions and judgments delivered in the courts below, the statement of grounds on which the jurisdiction of this Court is invoked, and the constitutional provisions and statutes cited, all of which are provided in the Petition for Certiorari.

In addition, respondents furnish a more comprehensive excerpt of the planned development provisions of the zoning ordinance as Appendix "A".

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SUPREME COURT OF THE UNITED STATES

_____Term, 1986

No. 86-371

JOHNNY M. IRVIN AND DAVID L. IRVIN

Petitioners,

VS.

RABUN COUNTY, GEORGIA, ET AL,

Respondents.

ON WRIT OF CERTIORARI
UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

STATEMENT OF THE CASE

Petitioners' statement of the case is misleading and incomplete.

Petitioners failed to disclose that under the existing zoning they are not restricted to agricultural use, that they may develop their property to include up to 60 residential units and that evidence was presented to the county commission that petitioners' property had considerable value if developed under the existing zoning.

Petitioners failed to disclose that although they had specific plans for development, they failed to avail themselves of an application for planned development, and that they failed to request a variance under the existing zoning which would permit the density of development which they had in mind.

Petitioners also failed to disclose that at both the hearing before the

county commission and in the record before the trial court there is substantial evidence that the proposed zoning is detrimental to the health, safety and welfare of the county, and that the existing zoning applies to a wide class of properties. (Appendices B, C, D)

SUMMARY OF ARGUMENT

Petitioners constitutional claims are not ripe for determination. If they were, petitioners would not be entitled to summary judgment.

REASONS REVIEW SHOULD NOT BE GRANTED

1. THE COURTS BELOW HAVE CORRECTLY RULED THAT THE TAKING ISSUE IS NOT RIPE FOR DETERMINATION.

As did the zoning applicants in Williamson, petitioners strenuously argue that they should not have to exhaust every conceivable avenue of zoning prior to seeking relief from the Federal Courts. In Williamson, however, the court in distinguishing Patsy v. Florida Board of Regents, 457 U.S. 496, 73 L.ED.2d 172, 102 S.Ct. 2557 (1982), discussed in great detail the difference in exhausting remedial procedures as opposed to exhausting procedures to determine whether the decision-maker has arrived at a definitive position. In holding that the latter is required, the court observed:

> "...resort to the procedure for obtaining variances would

> result in a conclusive determination by the Commission whether it would allow respondent to develop the subdivision in the manner respondent proposed."
> (Emphasis supplied)

No, the petitioners are not required to pursue every conceivable permissible use under the zoning ordinance, but they are required to exhaust all procedures which allow them to develop the land in the manner proposed. This they have not done. Rather, they have chosen to apply for an R-III zoning classification which provides for a density of development far in excess of what petitioners have planned.

Petitioners urge that their "offer of compromise" two days before the hearing is all that is required by Williamson. Petitioners' "offer of compromise", however, makes no attempt to follow the procedure required to obtain either a Planned Development or

a variance. (Petitioners' Appendix B, Respondents' Appendix A)

2. EVEN IF THE TRIAL COURT ERRED IN DISMISSING THE CASE FOR LACK OF JURISDICTION, IT DID NOT ERR IN REFUSING TO GRANT PETITIONERS' SUMMARY JUDGMENT.

Assuming, arguendo, that the trial court misapplied Williamson, the question remains as to whether the petitioners are entitled to a summary judgment on the theory that (1) a taking has occurred; and (2) the petitioners have been denied due process or equal protection.

This court has established two primary criteria for determining whether a taking has occurred. First, if the ordinance in question applies generally to a broad class of properties, it is generally held no-confiscatory. Penn

Central Transportation Company v. New York City, 438 U.S. 104, 123-24, 98 S.Ct. 2646, 2659, 57 L.Ed.2d 631 (1978); Goldblat v. Town of Hemstead, 369 U.S. 590, 82 S.Ct. 987, 8 L.Ed.2d 130 (1962). Second, the dimunition of value resulting from the ordinance must be of such magnitude to deprive the owner of the economic benefit of his land, Penn Central, supra; Village of Euclid V. Ambler Realty Company, 272 U.S. 365, 47 S.Ct. 114, 71 L.Ed 303 (1926); Hadacheck v. Sebastian, 239 U.S. 394, 36 S.Ct. 143, 69 L.Ed 348 (1915). Cf: Armstrong v. U.S., 364 U.S. 40, 80 S.Ct. 1563, L.Ed.2d 1554 (1968).

The evidence is clear that all similarly situated land around Lake Rabun is zoned as is the petitioners and that a rezoning to R-III would disrupt the established pattern of

development. (Appendix "B" and Appendix "C") Although petitioners speculate that that their proposed project will be extremely profitable, the evidence is that under the existing zoning the land can be developed and sold for $540,000.00 or a 222% return on their investment in less than a year. (Appendix "D")

Simply stated, substantive due process and equal protection in zoning matters depends on whether the legislative body has based the zoning on classification and standards reasonably related to the public health, safety, morals and general welfare. Agins v. Tiburon, 447 U.S. 255, 65 L.Ed.2d 106, 100 S.Ct. 2138 (1980); Nectow v. Cambridge, 277 U.S. 183, 188, 72 L.Ed 842, 48 S.Ct. 447 (1928), Village of Euclid v. Ambler Realty Co., 272 U.S. 365,

47 S.Ct. 114, 71 L.Ed 303 (1926); Goldblatt v. Town of Hempstead, 369 U.S. 590, 82 S.Ct. 987, 8 L.Ed.2d 130 (1962); Barrett v. Hamby, 235 Ga. 262, 219 S.E.2d 399 (1975).

The record in the trial court is replete with evidence of the adverse impact of petitioners' proposed zoning on population density, automobile and boat congestion, pollution of Lake Rabun and depreciation of surrounding property values. (Eg. Appendices B, C, D, E)

Since zoning is a legislative process, it is not subject to procedural due process review if it applies to a wide class of properties. South Gwinnett Venture v. Pruitt, 491 F.2d 5 (5th Cir.) (En Blanc) cert. denied, 419 U.S. 837, 95 S.Ct. 66, 42 L.Ed.2d 64 (1924); Bi-metallic Investment Co. v. State

Board of Equalization of Colorado, 239 U.S. 441, 36 S.Ct. 141, 60 L.Ed 372 (1915). Moreover, petitioners had the benefit of a public hearing, were represented by counsel and presented evidence. Under the tests of Matthews v. Eldridge, 424 U.S. 319, 335; 96 S.Ct. 893, 903; 47 L.Ed.2d 18 (1976), the petitioners allegations of lack of procedural due process is without substance.

CONCLUSION

It is respectfully submitted that review by this court is inappropriate.

Respectfully submitted,

STEWART, MELVIN & HOUSE

By: Frank W. Armstrong

Frank W. Armstrong
Ga. Bar No. 022100

By: William H. Blalock, Jr.
William H. Blalock, Jr.
Ga. Bar No. 061900

Bruce Russell
Bruce Russell
Ga. Bar No. 620925

APPENDIX

APPENDIX "A"

Rabun County Official Zoning
Ordinance and Subdivision Regulations
April 1974

...

Section 65. Planned Unit Development

65.1 General Character:

Purpose: It is the intent of this Section 65 to:

1. Encourage the development of large tracts of land as planned neighborhoods or communities;

2. encourage flexible and creative concepts in site planning;

3. preserve the natural amenities of the land by encouraging scenic and functional open areas within residential areas;

4. accomplish a more desirable environment than would be possible through strict application of minimum requirements of the Ordinance;

5. provide for an efficient use of land resulting in smaller networks of utilities and streets and thereby lower development and housing costs;

6. provide an environment of stable character compatible with surrounding residential areas.

Within the planned area, a variety of land uses may be permitted in an

orderly relation to one another and to existing land uses, as well as with due regard to comprehensive planning in Rabun County,

65.2 Requirements and Standards for Approval:

1. An application for development as a Planned Unit Development must contain a minimum area of twenty (20) contiguous acres.

2. The Rabun County Planning Commission and the Rabun County Board of Commissioners in their review of the proposed development plan shall consider:

a) The proper relation between the proposed development and surrounding uses, and the effect of the plan upon comprehensive planning for Rabun County;

b) the adequacy of existing and proposed streets, water, sewer, electrical and gas service, and other public services to serve the development;

c) the character, design, and appropriateness of the proposed land uses and their adequacy to encourage desirable living conditions, to provide separation and screening between uses where desirable to preserve the natural amenities of streams, wooded areas and similar natural features;

d) the adequacy of open and play areas and the recreation facilities provided for the needs of the development.

3. Approval and recommendation of the Planning Commission shall be accompanied by a report stating the reasons for approval of the application and specific evidence and facts showing that the proposed Planned Unit Development will not adversely affect the property adjacent to the area included in the plan.

4. Final approval of a Planned Unit Developmetn shall not be granted until the owner of the property gives written notice of his consent to the proposed development.

65.3 Review and Approval Procedures:

1. Pre-Application Conference

Prior to filing a formal application as Planned Unit Development, the applicant is encouraged to confer with the staff of the Planning Commission in order to review the general character of the plan (on the basis of a tentative land use sketch if available), and to obtain information on projected programs and other matters.

2. Development Plan

a) an applicant shall file a petition with the Administrative Officer for approval as a Planned Unit Development. This application shall be supported by a development plan and a written summary of intent, and shall show the relation between the proposed development and the surrounding area, both existing and proposed.

b) The following information shall be presented:

1. A general location map,

2. Existing topographic conditions, including coutour intervals of no more than five feet based on field surveys or photogrammetric methods,

3. The existing and proposed land uses and the approximate location of all buildings and structures,

4. The approximate location of existing and proposed streets and major thoroughfares,

5. The approximate location of all existing and proposed utilities, including a preliminary utility and drainage plan,

6. The present zoning pattern in the area,

7. A legal description of the subject property,

8. The location and use of existing and proposed public, semi-public, or community facilities such as schools, parks, and open area. This will include areas proposed to be dedicated or reserved for community or public use.

9. Perspective drawings of representative building types except for detached single-family dwellings and their accessory buildings.

10. If a proposed development creates special problems or involves

unusual circumstances, additional information may be required in order to properly evaluate the proposal as follows:

a) An off-street parking and loading plan.

b) An economic feasibility report or market analysis.

c) A traffic study of the area, and a circulation plan within the development and to and from existing streets and thoroughfares.

c) The written statement submitted with the development plan shall include the following information:

1. A statement of the present ownership of all land within the proposed development.

2. An explanation of the character of the proposed development, including a summary of acres, dwelling units and gross density by type of land use. The statement shall include minimum standards for floor area, lot size, yard and spacing requirements.

3. A general statement of the proposed development schedule and progression of unit division of staging.

4. Agreements, provisions, and covenants which govern the use, maintenance, and protection of the development and any common or open areas.

5. All road rights of way shall

be a minimum of sixty (60) feet and shall be constructed according to the typical sections approved by the Rabun County Board of Commissioners. (see exhibit A and exhibit B - Typical Section)

d) Approval

1. An application for approval of a Planned Unit Development will be considered administratively as a petition for rezoning, and will be subject to the procedures established in the Zoning Ordinance including the requirement of a public hearing.

2. After review and public hearing, the Board of Commissioners may disapprove, approve, or approve with modifications the plan after receiving the recommendations of the Rabun County Planning Commission.

3. If the development plan is approved as submitted, the administrative Officer will cause the official Zoning Map to be changed to indicate the Planned Unit Development. If the plan is approved with modifications, the applicant shall file written notice of consent to the modifications and a properly revised site plan with the Administrative Officer prior to changing the Zoning Map. The site plan and supporting information of any approved plan shall be properly identified and permanently filed with the Administrative Officer. No building permits shall be issued until the development plan has been approved by the Board of Commissioners.

. . .

4. Revisions of Development Plan

Any major or substantial change in the approved development plan which affects the intent and character of the development, the density of land use pattern, the location or dimensions of streets, or similar substantial changes will be reviewed and approved by the Board of Commissioners subsequent to receipt of the recommendation of the Planning Commission. A request for a revision of the development plan shall be supported by a written statement of why the revisions are necessary or desirable.

. . .

65.4 Use, Density and Other Regulations:

1. Permitted Uses

The uses permitted within the Planned Unit Development shall be primarily residential in character, and may include the following uses:

a) Single-family detached dwellings,

b) Single-family attached dwellings, townhouses, duplexes, or similar types,

c) Multi-family dwellings,

d) Churches, schools, community or club facilities, and similar public or semi-public facilities, including recreational facilities,

e) Commercial or retail uses, including offices and clinics provided

that they meet the following criteria:

1. The location is appropriate in relation to other land uses.

2. The proposed use is designed so that it will primarily serve the planned development.

f) Accessory uses to those listed above.

g) Mobile homes and modular homes are specifically prohibited in Planned Unit Developments.

2. Density Controls

The maximum number of dwelling units per acre in residential areas of the Planned Unit Development shall not exceed 5.5 dwelling units per acre. For purposes of this section, density shall be interpreted as the number of dwelling units per gross acre devoted to residential development. Gross acreage shall include, in addition to land area and parcels used primarily for residential purposes, all open spaces including private lakes reserved for common usage within the Planned Unit Development and held under private or condominium ownership. Gross acreage for residential development shall exclude areas reserved or dedicated for street right-of-ways.

Variance to Required Densities

The Board of Commissioners may allow a higher overall density, or a higher density of a particular residential use provided that the applicant can

show that such higher density will not be detrimental to the surrounding neighborhood. The Board of Commissioners shall consider a variance to the required density only on a favorable recommendation for a specific density by the Rabun County Planning Commission.

Land area proposed for common open space may be allocated to a single-family detached, single-family attached, and multi-family use areas in proportion to the ratio of the area of each use to the total area of residential use provided that open space acreage allocated to a use must be reasonably accessible to that use.

. . .

APPENDIX "B"

EXCERPT FROM DEPOSITION OF JACK PYBURN, A PROFESSIONAL LAND PLANNER, TAKEN ON FEBRUARY 8, 1985

. . .

Q. Now in making this investigation have you received information ordinarily relied upon by experts in your field in planning and making the determination that you made?

A. To my knowledge I've reviewed and assessed all the available information that is available to me from the typical sources in the county and related to this project.

. . .

Q. After making your investigation what opinion have you formed as to the propriety -- (of the current zoning)?

A. Well, based on my analysis my opinion is that the current zoning is a reasonable zoning for the subject piece of property. It's consistent with the topographic characteristics of the area. The tactics that are typical in dealing with the development of an area -- would be such as access, the kind of public roads, and so forth that are required.

Q. Based on the information received in your investigation, what opinion have you formed as to the

propriety of the proposed zoning of the subject property?

A. I think the proposed zoning is inappropriate for the site.

Q. Does the existing zoning bear a reasonable relation to public health, safety, and welfare?

A. I think it is a reasonable approach in relation to public health, safety, and welfare. I think given the long established development pattern in the community that current zoning allows -- it exceeds any development pattern that is already developed in the community and represents in fact a substantial increase over the present level of density that's been experienced in the area so there's a substantial amount of capacity in the site in addition to the established development pattern.

I think it also has to be as compatible as possible with the services and responsibilities of the county and their capatibility to provide those, to provide services to a development as is being proposed and I might add that -- Well, I'm sorry. Let me back up. I think the current zoning is the most compatible that's allowed in the current zoning district, the most appropriate.

Q. Will the proposed zoning have an adverse effect on the public?

A. I think it is unreasonable and an inappropriate zoning classification and I think to say that not dealing

specifically with what I understand the propose development plan to be of 126 units but more what the zoning will allow and that's more like 254 units. That's about 405 percent increase over the current zoning density that's allowed.

From my observations and analysis I found no apparent rationale for this density or this scale of development in this particular location over any other similar piece of property around the lake and for a development of this type there aren't the typical type of characteristics that you normally use in making decisions like this. One is the commercial ability of the services for higher density such as commercial activities.

. . .

APPENDIX "C"

EXCERPT FROM DEPOSITION OF HARRY HAYES, A PROFESSIONAL LAND PLANNER, PLANNING DIRECTOR, CITY OF GAINESVILLE, TAKEN ON FEBRUARY 8, 1985

. . .

Q. Has your investigation produced information ordinarily relied upon by zoners and planners in general in your profession so as to assess the advisability of the rezoning applied for?

A. Yes, sir. In reviewing their regulations in fact it seemed to be a very typical set of zoning regulations that's found in communities such as this; looked in fact very similar to the format that is normally recommended by the Georgia mountains for communities within their district.

. . .

Q. You can continue to describe your investigation.

A. . . .

So that based upon what I was told and from what I saw on the zoning maps it appeared that the predominant zoning on the lake frontage is vacation cottage zoning and then back behind that is an area zoned agricultural that is not just on the subject property but around the lake itself.

. . .

And so based upon the observations that I made in field and the review of the zoning regulations it appeared to me that the existing zoning viewed in the context of the existing development that we would have there both were compatible and that the appropriate zoning -- given the choices that they have that they made the appropriate choice.

. . .

Q. What was your conclusion as to the propriety of the R3 zoning?

A. I felt like there was not a justified need for a change in zoning to the R3 classification on this particular piece of property, that it did not have any particular characteristics that made it different from any other land in the area.

The fact that there was construction continuing in the area in accordance with the existing zoning I think demonstrated the existing zoning is appropriate for the area, therefore the present zoning for the property would be still appropriate.

Q. In your opinion, Mr. Hayes, does the existing zoning bear a reasonable relationship to the public health, safety and welfare?

A. I believe that it does, yes.

Q. Would the proposed zoning to R3 have an adverse effect to the public -- (health, safety and welfare)?

A. Yes, sir, I believe that the proposed zoning would have several areas of adverse effect that would be detrimental not only to the immediate area in terms of surrounding property but also to the community as a whole.

APPENDIX "D"

AFFIDAVIT

STATE OF GEORGIA

COUNTY OF RABUN

Before me this day personally appeared Mason Whitney, who, first duly sworn, deposes and says:

That I am a resident of Rabun County, Georgia, am a licensed real estate broker in the State of Georgia (license #B-5903), have been a licensed broker since 1968 and have been engaged in construction and land development since 1948.

I have examined the property located in Land Lot 65 of the 5th Land District of Rabun County, Georgia that was purchased May 15, 1984, from William B. Trautwein by Johnny Irvin, David Irvin and Sherrel Jackson. The property consists of two parcels, the first being approximately 2.03 acres zoned V-C and fronting on the shore of Lake Rabun, the second being approximately 24.30 acres adjacent to the first parcel and zoned Agricultural. The plat of survey prepared by Lamar Edwards & Associates, surveyors, is recorded in Plat Book 18, page 292 in the office of the Clerk of the Court, Rabun County, Georgia.

Under the present zoning, the owner/developer could subdivide the 730.3 feet of lake frontage into 9

vacant lots of 80 feet frontage each and retain a 10.3 foot access strip for the remaining back land to get to the lake. If the owner/developer so chose, the fair market value of the nine lots would be aproximately $60,000.00 each for a total of $540,000.00 without selling any of the back land. This would result in a gross profit for the owner/developer of $372,500.00 over the price they paid of $167.500.00 last May. This would reflect in a 222% return on their investment in a little over six months.

The back 24.30 acres could be held for future development or best utilized as presently zoned agricultural land with a present fair market value of approximately $1,500.00 per acre.

If this 24.33 acre tract is rezoned to R-III (multi-family) the values of existing land zoned V-C on Lake Rabun will decrease in value due to the threat of over crowding the entire area. In my opinion, the existing values will be decreased between 10% and 25% due to rezoning for high density development.

MASON WHITNEY

Sworn to and subscribed
before me this 12th day of
December, A. D. 198

CYNTHIA WHITNEY
Notary Public
State of Georgia
My commission expires 3-4-87

APPENDIX "E"

AFFIDAVIT OF JUD LAWS

STATE OF GEORGIA

COUNTY OF RABUN

Personally appeared before the undersigned attesting officer duly authorized by law to administer oaths, JUD LAWS, who, after being duly sworn, on oath, states as follows:

1.

My name is JUD LAWS and I give this Affidavit voluntarily and state that I am competent to give this Affidavit and that it is based upon my own personal knowledge.

2.

I own property on Lake Rabun and on Lake Rabun Road and live here with my wife and child as a full-time, year-round resident. My property is located approximately two (2) miles via Lake Rabun Road from Mr. Irvin's property.

3.

I am familiar with the number of boats on Lake Rabun as I go onto the Lake nearly every day, year-round, with my family. I have personally, on more than one occasion within the last six months, made an actual count of the number of boats on Lake Rabun and that number is 553 power, 91 non-power.

4.

In addition, I am familiar with the number of boats that are launched at the public launch ramp and at the launch ramp at Hall's Boat House by non-residents of the Lake and that number averages 10 on any given weekend between April 1 and October 1.

5.

The total number of boats which may potentially be used on any given weekend during the summer is 175.

6.

The total square acreage of water on Lake Rabun is _____ square acres. This means that, on a given weekend in the summer, there are _____ boats per acre in use.

7.

If 126 condominium units are built as proposed on Mr. Irvin's property, and if it is assumed that each unit owner will have a boat (this does not take into consideration time-sharing and the fact that many families will have two boats), there will an increase of 25% percent of new boats introduced to Lake Rabun.

8.

I am personally familiar with the overcrowded condition of boat traffic on the Lake. There are several accidents

each summer because of the narrowness of the Lake and the excess of boats. In several instances, people have been seriously hurt and skiers have nearly been killed simply because there are too many boats for this small lake.

9.

In addition, I am personally familiar with the depth of water around Mr. Irvin's property that it is in the very shallow part of the Lake and of the approximate ten acres in front of the property, only one acre is navigable for boat traffic. In addition, approximately 100 yards away from Mr. Irvin's property is the public beach where swimmers are swimming very close to this boat traffic.

FURTHER AFFIANT SAITH NOT

JUD LAWS

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 10th DAY
DECEMBER, 1984.

Joan T. Bingham
NOTARY PUBLIC
My Commission Expires March 23, 1985

AFFIDAVIT OF MAILING UNDER RULE 28.2
AND CERTIFICATE OF SERVICE

STATE OF GEORGIA,
COUNTY OF HALL.

Before me, the undersigned authority authorized to administer oaths, personally appeared Frank W. Armstrong, a person known to me, who, after being first duly sworn, stated the following:

1.

I certify that I have applied for membershp of the Bar of the Supreme Court of the United States and have been informed by the Clerk that I will be admitted October 14, 1986.

2.

I hereby certify that the original and forty (40) copies of the Brief in Opposition to Writ of Certiorari prepared by me on behalf of Rabun County, Georgia, Et Al, were delivered by hand, via Federal Express, to the Clerk of the United States Supreme Court, 1 First Street,

N. E., Washington, D. C. 20543, within the time allowed for filing and mailing took place before that time.

3.

I further certify that one (1) copy of the Brief in Opposition to Writ of Certiorari was also served on counsel for Petitioners by depositing a copy of same in the United States Mail, with proper postage prepared and affixed, addressed as follows:

George P. Dillard
Dillard, Greer, Westmoreland
& Wilson, P.C.
Suite 375, 160 Clairmont Ave.
Decatur, Georgia 30030

This 8th day of October, 1986.

Frank W. Armstrong
Frank W. Armstrong

Sworn and subscribed
before me this 8th
day of October, 1986.

Stephanie M. Cash
Notary Public
Georgia, Hall County
My Commission Expires: 2/15/87